

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 2013-273

12 **NANCY CUELLAR**

**STATEMENT OF ISSUES**

13 Applicant for Registered Nurse License

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely  
19 in her official capacity as the Executive Officer of the Board of Registered Nursing, Department  
20 of Consumer Affairs.

21 2. On or about June 17, 2011, the Board of Registered Nursing, Department of  
22 Consumer Affairs received an application for a Registered Nurse License from Nancy Cuellar  
23 ("Respondent"). On or about May 30, 2011, Nancy Cuellar certified under penalty of perjury to  
24 the truthfulness of all statements, answers, and representations in the application. The Board  
25 denied the application on February 10, 2012.

26 ///

27 ///

28 ///

1

2

3

4

6

7.

8

9

0

1

2

3

4

5

chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

...

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Section 2762 of the Code states in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022."

7. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

8. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

1 (d) The Legislature hereby finds and declares that the application of this  
2 section has been made unclear by the holding in *Petropoulos v. Department of Real*  
3 *Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a  
4 significant number of statutes and regulations in question, resulting in potential harm  
5 to the consumers of California from licensees who have been convicted of crimes.  
6 Therefore, the Legislature finds and declares that this section establishes an  
7 independent basis for a board to impose discipline upon a licensee, and that the  
8 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session  
9 do not constitute a change to, but rather are declaratory of, existing law.”

10 9. Section 2765 of the Code states:

11 “A plea or verdict of guilty or a conviction following a plea of nolo  
12 contendere made to a charge substantially related to the qualifications, functions and  
13 duties of a registered nurse is deemed to be a conviction within the meaning of this  
14 article. The board may order the license or certificate suspended or revoked, or may  
15 decline to issue a license or certificate, when the time for appeal has elapsed, or the  
16 judgment of conviction has been affirmed on appeal or when an order granting  
17 probation is made suspending the imposition of sentence, irrespective of a subsequent  
18 order under the provisions of Section 1203.4 of the Penal Code allowing such person  
19 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
20 the verdict of guilty, or dismissing the accusation, information or indictment.”

21 10. Section 493 of the Code states:

22 “Notwithstanding any other provision of law, in a proceeding conducted  
23 by a board within the department pursuant to law to deny an application for a license  
24 or to suspend or revoke a license or otherwise take disciplinary action against a  
25 person who holds a license, upon the ground that the applicant or the licensee has  
26 been convicted of a crime substantially related to the qualifications, functions, and  
27 duties of the licensee in question, the record of conviction of the crime shall be  
28 conclusive evidence of the fact that the conviction occurred, but only of that fact, and  
the board may inquire into the circumstances surrounding the commission of the  
crime in order to fix the degree of discipline or to determine if the conviction is  
substantially related to the qualifications, functions, and duties of the licensee in  
question.

As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’  
‘authority,’ and ‘registration.’”

#### REGULATORY PROVISION

11. California Code of Regulations, title 16, section 1444, states:

“A conviction or act shall be considered to be substantially related to the  
qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

“(a) Assaultive or abusive conduct including, but not limited to, those  
violations listed in subdivision (d) of Penal Code Section 11160.

“(b) Failure to comply with any mandatory reporting requirements.

“(c) Theft, dishonesty, fraud, or deceit.



1 c. On or about July 3, 2007, Respondent was convicted of one felony count of  
2 violating Vehicle Code section 10851(a) [driving without owner's consent] in the criminal  
3 proceeding entitled *The People of the State of California v. Nancy Cuellar* (Super. Ct. of  
4 California, County of Los Angeles, 2007, Case No. PA059224). Respondent was sentenced to 60  
5 days in Los Angeles County Jail and was placed on probation for a period of three years with  
6 terms and conditions. The circumstances underlying the conviction are that on or about May 24,  
7 2007, Respondent unlawfully drove a vehicle without the consent of the owner and with the intent  
8 to either permanently or temporarily deprive the owner of possession of the vehicle.

9 **SECOND CAUSE FOR DENIAL OF APPLICATION**

10 **(Acts Involving Dishonesty)**

11 14. Respondent's application is subject to denial under section 480, subdivision (a)(2) in  
12 that Respondent committed acts involving dishonesty when she attempted to purchase store  
13 merchandise with a forged ID card against an established store credit line, when she removed and  
14 concealed property and exited JC Penny with concealed property and without paying for the  
15 property and when she took a vehicle without consent. Respondent was criminally convicted of  
16 these actions. The actions and subsequent criminal convictions are described in more  
17 particularity in paragraph 13, subdivisions (a) through (c) above, inclusive and herein  
18 incorporated by reference.

19 **THIRD CAUSE FOR DENIAL OF APPLICATION**

20 **(Drug-Related Transgressions)**

21 15. Respondent's application is subject to denial under section 2762, subdivision (a) of  
22 the Code on the grounds of unprofessional conduct in that on or about January 25, 2005,  
23 Respondent possessed approximately 4.38 gg of Methamphetamine, a controlled substance and  
24 dangerous drug, in violation of the law. The circumstances surrounding the possession of  
25 Methamphetamine are that on or about January 25, 2005, Los Angeles Police Department  
26 Officers conducted surveillance in the area of San Fernando Mission Boulevard and Balboa  
27 Avenue in response to numerous crime reports and citizen complaints of high criminal activity.  
28 Officers parked approximately 100 yards west of a motor home in the rear of a parking lot.

1 Officers observed Respondent park her vehicle in the parking lot near the motor home and enter  
2 the motor home. Approximately 30 minutes later, Respondent exited the motor home and  
3 returned to her vehicle. Officers observed Respondent look at numerous items in the back seat of  
4 her vehicle. Officers approached Respondent believing the items were stolen. Officers observed  
5 Respondent holding a clear plastic bag containing a crystal like substance resembling  
6 Methamphetamine. After the officers identified themselves as police officers, Respondent  
7 opened her hand and dropped the bag which fell onto the floor of the vehicle directly behind the  
8 front passenger seat.<sup>1</sup>

9 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

10 **(Violation of the Nursing Practice Act)**

11 16. Respondent's application is subject to denial under section 2761, subdivision (d) of  
12 the Code in that Respondent violated provisions of the Nursing Practice Act. The violations are  
13 described in more particularity in paragraph 13 through paragraph 15 above, inclusive and herein  
14 incorporated by reference.

15 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

16 **(Act Which Done by Licensee Would be Grounds for Discipline)**

17 17. Respondent's application is subject to denial under section 480, subdivision (a)(3) in  
18 that Respondent committed acts which if done by one holding a license would be grounds for  
19 discipline of that license in that:

20 a. Respondent was convicted of substantially related crimes in violation of section  
21 490 of the Code in conjunction with California Code of Regulations, title 16, section 1444. The  
22 convictions are described in more particularity in paragraph 13, subdivisions (a) through (c)  
23 above, inclusive and herein incorporated by reference.

24  
25 <sup>1</sup> On or about November 4, 2005, Respondent pled nolo contendere to violating one felony count  
26 of Health and Safety Code section 11377(a) in the criminal proceeding entitled *The People of the State of*  
27 *California v. Nancy Cuellar* (Super. Ct. of California, County of Los Angeles, 2005, Case No. PA050598).  
28 The court placed Respondent on deferred entry of judgment for three years, with terms and conditions.  
Respondent successfully completed the deferred entry of judgment program and the matter was dismissed  
pursuant to Penal Code section 1000.3 on February 22, 2008.

b. Respondent possessed Methamphetamine, a controlled substance and dangerous drug in violation of section 2762, subdivision (a) of the Code. The possession is described in more particularity in paragraph 15 above, inclusive and herein incorporated by reference.

## PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Nancy Cuellar for licensure as a Registered Nurse;
2. Taking such other and further action as deemed necessary and proper.

DATED: October 11, 2012

*Louise R. Bailey*  
 LOUISE R. BAILEY, M.ED., RN  
 Executive Officer  
 Board of Registered Nursing  
 Department of Consumer Affairs  
 State of California  
*Complainant*

LA2012506573  
51115338.doc